IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1055 of 2015

F.Louis Arul Joseph ... Appellant

versus

1. State of Tamilnadu, Rep. By
   the Secretary to Government,
   Planning & Development Department,
   Secretariat,
   Chennai 9.

2. The Commissioner,
   Department of Economic & Statistics,
   Chennai 6.

3. The Managing Director,
   Tamilnadu State Marketing Corporation Ltd.,
   IV Floor, CMDA Tower-II,
   Egmore, Chennai 8. ... Respondents

Appeal filed against the order passed by this Court dated 14.11.2014 passed in W.P.No.9349 of 2007 (O.A.No.4724/2002)

Writ Petition No.9349 of 2007: This Petition came to be numbered by transfer of O.A.No.4724 of 2002 from the file of the Tamilnadu Administrative Tribunal, praying for a Writ of Certiorari to To call for the records on the file of the respondents 3 and 2 in connection with the orders passed by them in their proc.no.3104/M3/99-2 dated 18.5.2001 and no.50282/E1 (2)/2001 dated 5.9.2001 respectively and the quash the same.

For appellant : Mr.R.Singaravelan
for Ms.M.Srividhya

For Respondents: Mr.N.Manikandan,
Government Advocate for RR 1 & 2

Mr.M.John Kennedy for R3

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this Intra Court Appeal is to the order of the learned Single Judge dated 14.11.2014 made in WP No.9349 of 2007 (O.A.No.4724 of 2002, Tamil Nadu Administrative Tribunal, Chennai), in and by which, the Writ Petition filed by the appellant was dismissed, confirming the punishment of recovery of the loss sustained by the employer.

2. The appellant was employed as a Junior Assistant in the Economics and Statistics Department. The appellant was sent on deputation to Tamil Nadu State Marketing Corporation/TASMAC for the period from 02.05.1997 to 01.05.2000 and during the said period, the appellant was charge sheeted for certain loses that occurred in handling of liquor bottles. During the relevant period, viz. 28.01.1998 to 13.05.1999, the appellant was employed as a Godown Assistant. An enquiry was conducted and the Enquiry Officer filed his report on 03.12.1999, concluding that the charges against the petitioner/appellant had been established. The Disciplinary Authority by its order dated 18.05.2001 accepted the report of the Enquiry Officer and imposed the punishment of recovery of 50% of the loss amount along with differential amount of Rs.132/-. The said order of recovery imposed by the Disciplinary Authority was challenged by the appellant, before the Appellate Authority, viz. The Commissioner, Department of Economic and Statistics. The Appellate Authority, by its order dated 05.09.2001, dismissed the Appeal concurring with the orders of the Disciplinary Authority.

3. Aggrieved the appellant filed the Original Application in OA No.4724 of 2002, before the Tamil Nadu Administrative Tribunal. Upon abolition of the said Tribunal, the said Original Application stood transferred to this Court and the same was numbered as WP No.9349 of 2007. By an order dated 14.11.2014, the learned Single Judge, who heard the Writ Petition, dismissed the same concurring with the views of the Authorities below.

4. Aggrieved, the appellant has come forward with this Intra Court Appeal.

5. We have heard Mr.R.Singaravelan, learned counsel appearing for Ms.M.Srividhya for the appellant, Mr.N.Manikandan, learned Government Advocate appearing for the respondents 1 and 2 and Mr.M.John Kennedy, learned counsel appearing for the 3rd respondent.

6. Mr.R.Singaravelan, learned counsel appearing for the appellant would contend that neither the Disciplinary Authority nor the Appellate Authority have considered the merits of the case. Both the orders, according to him, are non speaking orders. He would also attack the finding of the learned Single Judge to the effect that the appellant has not raised the plea that it is only the load man, who is responsible for the loss of stock, before the Disciplinary Authority or the Appellate Authority.

7. Pointing out that even in the Enquiry Report, the Enquiry Officer had extracted his defence, wherein, it is clearly stated that the loss had occurred only due to the negligence of the load man, who is responsible for the loss and same has been rejected by the Enquiry Officer.

8. We have gone through the material placed and we find much force in the contention of the learned Senior counsel appearing for the appellant that the orders of both Disciplinary Authority as well as the Appellate Authority are non speaking orders. The operative portion of the order of the Disciplinary Authority, reads as follows:

> "6. All the records of the case, individuals explanations and report of Enquiry Officer have been scrutinized. All the charges have been held proved beyond doubt. However taking a lenient view, the 50% of loss amount of Rs.24,112/- i.e. Rs.12,056/- along with the different amount of Rs.132/- due to contra supply of monitor whisky 180 ml is ordered to be recovered from the salary of June 2001 of Thiru.F.Louis Arul Joseph, formerly Go-down Assistant, IMFS Depot, Tiruppur in 24 instalments @ Rs.688/- in 1st instalment and Rs.500/- from 2nd instalment onwards till the completion of total recovery."

9. Aggrieved by the above order of the Disciplinary Authority, the appellant had filed an Appeal Petition before the Appellate Authority. In the Appeal Petition, the appellant had specifically raised the ground that it was a kallasi/load man, who was responsible for the loss. The Appellate Authority while disposing of the Appeal Petition had just repeated the charges, the order of the Disciplinary Authority and concluded as follows:

> "The appeal petition of Thiru.F.Louis Arul Joseph has been examined with the connected records. The appellant has not adduced any fresh grounds worth reconsideration. His appeal petition be and is hereby

rejected accordingly."

10. The order of the Appellate Authority to say the least is totally unconvincing. The purpose of the provision of statutory appeal is to enable the reconsideration of the material on record. Unfortunately in the case on hand, neither the Disciplinary Authority nor the Appellate Authority had adverted to the principles to be followed in conduct of disciplinary proceedings and both the orders are non speaking orders, which have been rendered, without analyzing the facts and circumstances. The learned Single Judge had also not adverted to the above fact that both the orders are non speaking orders.

11. The learned Single Judge proceeded to dispose of the Writ Petition only on the ground that the attempt of the appellant to blame the load-man for the loss was not raised before the Authorities. The said finding also is factually in-correct. In fact, even before the Enquiry Officer, the appellant has raised a plea that the load-man was responsible for the loss. Again in the grounds on appeal also, we find that such a plea has been raised. Therefore, we are of the considered opinion, that the order of the learned Single Judge dismissing the Writ Petition requires to be set aside and the same is accordingly set aside. The orders of the Disciplinary Authority as well as the Appellate Authority are also set aside as they are non-speaking orders, which do not reveal application mind on the part of the Authorities.

12. In the normal course, if the orders in the disciplinary proceedings are set aside for non-compliance with the Rules or on the ground that they are non-speaking orders, the matter would be remanded to the Authority concerned for reconsideration. In the case on hand, it is not in dispute that the appellant had retired from service even in the year 2009, the charges were framed during the year 2000 and the Original Authority/Disciplinary Authority passed orders imposing punishment in the year 2001. The same was confirmed by the Appellate Authority on 05.09.2001. The Original Application filed by the appellant in the year 2002, upon transfer to this Court, came to be disposed of on 14.11.2014. Considering the fact that nearly 18 years were gone-by since framing of charges and the fact that the appellant had attained the age of superannuation even in the year 2009, we do not deem it fit to remit the matter back to the Authorities for fresh consideration.

13. The punishment of recovery imposed on the appellant is therefore set aside. It is also reported that pursuant to the order of the authorities, 50% of the loss, viz. a sum of Rs.11,283/- along with difference amount of Rs.132/- has been recovered from the appellant. We, therefore, make it clear that the appellant will not be entitled to demand refund of the amount already recovered. Since the loss caused to the 3rd respondent/ Corporation is not in dispute and we are setting aside the orders of the punishment only on the technical ground, it is made clear that the appellant would be entitled to all monetary benefits as if the punishment of recovery has not been imposed upon him.

14. The Writ Appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

jv

To

1. The Secretary to Government,
Government of Tamil Nadu
Planning & Development Department,
Secretariat, Chennai 9.

2. The Commissioner,
Department of Economic & Statistics,
Chennai 6.

3. The Managing Director,
Tamilnadu State Marketing Corporation Ltd.,
IV Floor, CMDA Tower-II,
Egmore, Chennai 8.

+1cc to Mr.M.Sreevidhya, Advocate SR.No.30148
+1cc to Mr.John Kennedy, Advocate SR.No.30429
+1cc to Government Pleader SR.No.30363

W.A.No.1055 of 2015

GJ(CO)
GN(23/05/2018)